

**REMARKS**

Claims 2-29 and 34-44 are pending in the present application.

Claim 44 has been allowed.

Claims 6, 9, 34 and 36 were objected to but were indicated to be allowable if rewritten in independent form including all limitations of the base claim and any intervening claims. These claims have been so amended herein.

Claims 16-29, 35 and 37-43 have been withdrawn from consideration, but not canceled.

Claims 2-4, 6-11, 16-18 and 34-36 were amended herein.

Reconsideration of the claims is respectfully requested.

**Request for Reconsideration of Restriction Requirement**

A restriction requirement has been asserted against claims 2-15, 34, 36-37 and 44 and claims 16-29, 35 and 38-43. Reconsideration of this restriction requirement is respectfully requested.

Restriction is only proper when claimed inventions are either independent or distinct. MPEP § 803, p. 800-3 through 800-4 (8<sup>th</sup> ed. rev. 1 February 2003). Where claimed inventions are related (i.e., NOT independent) as process and apparatus for performing the process, distinctness may be shown by showing that the process *as claimed* may be performed by another materially different apparatus or by hand or that the apparatus *as claimed* may be used to perform another and materially different process. MPEP § 806.05(e), p. 800-44.

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The restriction requirement asserts that the claimed apparatus and process are distinct because:

In this case, the apparatus as claimed can be used to practice another vending method which does not required the steps of providing the customer with a first or second alternative choices. In this case, the process claims can be practices by another materially different apparatus which does not required the adjustment of the light source from the emitter(s).

Paper No. 6, page 2. However, the features cited in the above-quoted language are NOT recited in independent claims 2, 16 and 24. Instead, the cited features are recited in dependent claims 10–11 and 20–21. Accordingly, the restriction require fails to establish any basis for restricting claims 2–9, 12–15, 34, 36–37 and 44 and claims 16–19, 22–29, 35 and 38–43; only claims 10–11 and claims 20–21 could be restricted from the remaining claims on the basis asserted in the restriction requirement.

In addition, even where claims are directed to distinct inventions, restriction is only proper upon showing of a serious burden on the examiner if restriction is not required. MPEP § 803, p. 800-4. Such a showing may be made by demonstrating separate classification, separate status in the art, or different fields of search. MPEP § 803, 800-4. The restriction requirement establishes that the claims at issue are all classified in the same classes: class 221 or class 700. The restriction requirement merely identifies different subclasses. Differences in subclass are not sufficient to establish separate classification.

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Still further, Applicant concedes that claims 2 and 16 are obvious over each other within the meaning of 35 U.S.C. § 103. Accordingly, based on this express admission, restriction between those claims is no longer proper. MPEP § 803, p. 800-4.

**35 U.S.C. § 102 (Anticipation)**

Claims 1-5, 7-8, 10-12 and 14 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,384,402 to *Hair, III et al.* This rejection is respectfully traversed.

A claim is anticipated only if each and every element is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. MPEP § 2131 at p. 2100-70 (8<sup>th</sup> ed. rev. 1 February 2003).

Independent claims 2 and 16 each recite monitoring the product delivery path using a plurality of discrete light beams. In this manner, interruption of at least one light beam, which is easier to detect, may be employed to detect product delivery. Such a feature is not found within the cited reference. *Hair, III et al* only teaches continuous planes of diffuse light reflected by a collector from the source to the detector, requiring measurement in changes of relative magnitude of the light received by a detector rather than simply presence or absence of light (i.e., an uninterrupted or interrupted light beam) at the detector.

Therefore, the rejection of claim 1-5, 7-8, 10-12 and 14 under 35 U.S.C. § 102 has been overcome.

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**35 U.S.C. § 103 (Obviousness)**

Claims 13 and 15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Hair, III et al* in view of U.S. Patent No. 6,324,520 to *Walker et al*. This rejection is respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142, p. 2100-123 (8th ed. rev. 1 February 2003). Absent such a *prima facie* case, the applicant is under no obligation to produce evidence of nonobviousness. *Id*.

To establish a *prima facie* case of obviousness, three basic criteria must be met: First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142 at p. 2100-124.

As noted above, independent claim 2, from which claims 13 and 15 depend, recite at least one feature not found in *Hair, III et al*. Such a feature is also not found in *Walker et al*.

Therefore, the rejection of claims 13 and 15 under 35 U.S.C. § 103 has been overcome.

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If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *dvenglarik@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

DAVIS MUNCK, P.C.

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Daniel E. Venglarik  
Registration No. 39,409

P.O. Drawer 800889  
Dallas, Texas 75380  
(972) 628-3621 (direct dial)  
(972) 628-3600 (main number)  
(972) 628-3616 (fax)  
E-mail: *dvenglarik@davismunck.com*